Appealing Land Use Decisions

CHAPTER 15

There are two facets to the appeals issue: when *can* you appeal and when *must* you appeal.

When *can* you appeal?

As with just about every other aspect of American life, one does not have to settle for the first answer given in a land use issue. Dispute resolution is, more often than not, what the land use procedures are all about.

If you disagree with a decision, there is invariably a method to appeal it from the first decision-maker to some other entity. To make that appeal yourself, you need to do some research about the process and then follow the specific procedures.

Some land use decisions are not even meant to be final (such as when the planning commission reviews a rezoning application that comes before them and makes a recommendation to the city council). In such cases there is another decision to be made which is set up automatically. You will have an additional chance to influence the decision at the second level of review, usually before the local council or county commission.

Again, there is no substitute for reading the local ordinance because that is the only way to determine when some decisions are subject to appeal.

There may be many variations on the theme when it comes to appeals, but there are a few general guidelines that are set by state statute or court precedent.

Standing. This is a legal term of art that means the person asking the question is entitled to the answer. If the law says you have no legal interest in the issue, then you have no right to demand the issue be heard at all, much less that it be resolved one way or the other.[1]

The applicant typically has standing to challenge a denial of his application. The ordinance may allow neighbors or others the right to bring a challenge or make an appeal whether the application is approved or denied. If your constitutional rights are affected, you have standing to protect them. Check the local ordinance and ask the staff or local government attorney or your own lawyer to be sure you have standing before you initiate an appeal.

When *must* you appeal?

If you *can* make an appeal, there is always a deadline by which you must file an appeal or lose the right to keep the legal issues alive. You will probably be left out in the cold with nothing to argue about if you do not file a timely appeal. It is essential that you check on local appeals procedures and deadlines.

Exhaustion. There is invariably a local procedure that could be used to resolve land use issues, and the person challenging local decisions must file an appeal using such procedures before the applicable deadline passes. According to statute, there is no cause of action in district court or in arbitration until after the "exhaustion of local administrative remedies."[2] If you miss the deadline, you did not exhaust your remedies and the issue is closed even though your appeal may have been successful.[3]

The word "exhaustion" may be well chosen, because if there is a means of appeal, even if it appears to be futile and a waste of time, you must use it. According to the Utah Supreme Court, allegations of unfairness in the day-to-day relationship between property owners and city staff do not support a claim that the entire administrative appeals process is inoperative or unavailable.[4]

Exception: Violations of federal statute such as the Fair Housing Act or the statute that protects religious organizations from local regulation may allow a direct appeal to federal court without local appeals. Lawsuits involving local government based in administration of the community ordinances and state statutes must exhaust local remedies, but those pursuing federal statutory relief need not.

This is an opportunity that many citizens miss. Once a property owner complained to me that the local health department refused to allow him to build a home on his residential lot because his land was within the "source protection zone" of a city's water supply and he would need a septic tank. I explained that a refusal to allow any

building at all could be an unconstitutional act if he was denied all use of his property. He indicated that when he went to the health department, they refused to allow him to make application for building approval and told him if he did, he would be turned down. Discouraged, he left the matter there.

I asked him whether his neighbors were allowed to build and he said they were treated the same way. They all chose not to press the issue. At least one of them was a lawyer.

As ombudsman, I convened a mediation session—or more accurately described—an information sharing meeting. Three property owners came, as well as officials of the state water quality division, county attorney's office, health department, and county building department. The property owners told their stories, and all listened. When they were finished, I turned to the health officials present and they agreed with the details of the story. They had refused to process any applications.

I then turned to the county attorney present. "Could the health officials do that?" I asked. "No," he said. "They legally had to at least take the application and deny it. According to the code, the property owner would then have an opportunity to appeal the denial to the County Board of Health."

"Has anyone done that?" I asked. "No" was the response. No property owner, in the face of a total loss of all use of his property, had ever chosen to force the matter with an appeal to the Board of Health. The county attorney wondered aloud if the board would even know what to do if such an appeal came to them.

"Did you know about that right to appeal?" I asked the health officials present. "No" they said. "We knew our division director would never allow building permits and that any effort to get past his policy would be futile."

"Well, then," I said, "obviously if the fellows at the counter have refused the process, then it would have been a waste of time. The property owner can now go to court or come to me as ombudsman since any local appeal is futile."

"Not so," said the attorney. "We will vigorously oppose any such effort to go to court or arbitration because the person has not exhausted the local administrative remedies."

"You mean to tell me then that the property owner, who has no knowledge of such matters, is supposed to read the fine print in the codes, figure out that an appeals procedure exists, teach the local officials about it, and then demand that appeal over their objections before the property owner can go to court or expect the ombudsman to arrange arbitration of the issue?" I asked.

"Exactly."

What is even more astounding is that he is absolutely correct. As ombudsman, I could not take such an agency to arbitration until the property owners had exhausted their local appeals.

Levels of Appeal

Appeals are thus divided into two levels. First, internal appeals within the local government's land use procedures, and second, beyond the county or municipality to the court or the property rights ombudsman.

For internal appeals, if a landowner or citizen wishes to have a land use issue heard in arbitration or at court, one of the following appeals procedures must be used first:

1. if the matter involves a challenge to the way the zoning ordinance is being applied or interpreted, appeal to a land use appeals authority asking whether the ordinance is being correctly applied; or
2. if the matter involves the building, fire, health, landmarks, impact fees, or other special codes of ordinances, use the appeals procedures in those codes or ordinances; or
3. if the local action may involve the violation of protected property rights, use the local takings appeals procedure; or
4. follow appeals procedures as provided in local ordinances.

For appeals beyond the local government, once the local process has been "exhausted," there are two choices to resolve the matter beyond the local jurisdiction:

1. request arbitration and mediation through the office of the Property Rights Ombudsman; and/or
2. file a Petition for Review to the local state district court. (There is no appeal to federal court unless a federal statute or constitutional right is involved.)

1. Appeals to a Local Land Use Appeals Authority

Asking for an Interpretation of the Land Use Ordinance

Nature of the decision

Every time the land use ordinance is applied, someone must decide what it means and how it should control the proposed application or use. It would be impossible for the local council or commission to anticipate every issue that may come up or to even attempt to regulate every change that people may wish to make on their properties. If there is a disagreement about what the language of the zoning ordinance means or how it should be applied, state statute mandates that a local government provide an appeal process to resolve the question.[5]

This statutory right to appeal any decision applying the ordinance to a land use appeal authority is a very powerful, but seldom used, tool for citizens and property owners.

When and where must the appeal be filed?

There may or may not be a deadline for an appeal in the local ordinances or rules—check and read the ordinances to be sure.

The process of filing the appeal is probably provided for in the procedures adopted by local ordinance. There is often a fee involved. Don't miss the deadline because it will be fatal to your cause if you do. A recent case involving some neighbors who protested the building of a house in the foothills of Draper makes the point vividly.[6]

The owners of a hillside lot sought a permit to build a home on a slope that exceeded 30 percent, a thing the ordinance supposedly did not allow. The neighbors protested. The planning commission and city council reviewed the matter twice.

The first time, the planning commission denied the right to build. At a rehearing it reversed itself and allowed the home builder to go ahead. There was a requirement in the ordinances that any appeal from such a decision had to be filed within 14 days. No exceptions were allowed.

Fourteen days went by, and the property owner poured his foundation. After the neighbors raised vociferous objections, the city council got involved. They held a hearing and suspended the permits, despite the appeals deadline passing.

On appeal to the Utah Court of Appeals, the property owner prevailed. The court said that neither the neighbors nor the city's own legislative body could ignore the appeals deadline in the ordinance. Even the city council could not overturn the planning commission's approval if 14 days passed without a written appeal. If there is no time provided in local ordinance, you only have 10 days.[7]

Don't miss the deadline to file an appeal. Again, if there is no time provided in local ordinances, you have only 10 days.

Who makes the decision?

Local ordinances must state who is to hear appeals and interpret ordinances and rules. An appeal authority may be a board of adjustment, an appeals board, or a single hearing officer. The following guidelines would apply to any appeal no matter which body is hearing the appeal.

What notice is required?

An appeals body must post a notice 24 hours in advance as required by the Open and Public Meetings Act.[8] It also must comply with any notice requirements in the local ordinance. A single hearing officer is not subject to the act because one person is not a "public body" and need not hear an appeal in public unless local ordinance requires it.[9]

What public input is required?

No public hearing is required by state statute, even if the appeal authority is a public body and its meetings are therefore public meetings. Local ordinance or practice usually provides for public comment on all land use issues before bodies making decisions in this arena. Check the local ordinance and board of adjustment procedures.

What are the issues?

There are most commonly both issues of fact and law that are considered in making a land use decision. On appeal, the appeal authority reviews the facts of the matter and applies the local ordinances, state statutes and other relevant law to the issues.

On questions of fact, there are two alternatives as to how the appeal authority reviews them. The county or municipality may, by ordinance, designate whether the appeal authority is to defer to the original decision-maker as to the factual issues or not.

De Novo Review. In a de novo review, the appeal authority steps into the shoes of the original decision maker, reviews evidence, perhaps conducts public hearings, and relies on its own judgment to make the decision all over again. "De novo" means "anew" or "over again". Under state law, if the local government has not designated a scope of review, the appeal authority is to make the decision de novo.[10] There is no deference to the decision-maker whose decision is appealed.

Record Review. In a record review, the appeal authority may only confirm the original decision if that record includes substantial evidence to support the factual findings.[11] If it does, then the next issue is whether the law was properly applied to the facts. If it was, the decision below is confirmed. In a record review, the decision-maker's conclusions are granted deference on the facts. One issue that may arise is where there is no record or an inadequate record of the decision below. Where the local ordinance calls for a record review and there is no record, the appeal authority should remand the matter back to the original decision maker to establish an appropriate record.[12]

In either review, whether the appeal authority reconsiders the factual findings or not, there is no deference to the legal conclusions reached by the original decision-maker. The issue with conclusions of law in an appeal is whether those conclusions were "correct."[13]

In reviewing whether the interpretation of the law in the decision appealed was correct, the appeals authority must simply review the plain language of the ordinance to determine what it means and how it should be applied.

This is important. The issue before the authority is not whether the official that previously interpreted the ordinance had a reasonable basis for coming to said conclusion, but whether the body hearing the appeal comes to the same conclusion based on its independent review of all the information available to it.[14]

In making the determination of what the ordinance means, the body hearing the appeal should follow the guidelines in recent Utah case law (note that where the court refers to the "legislature" it does not only mean the state legislature, but a local city council, town board, and county council or commission):

". . . It is well settled that when faced with a question of statutory interpretation:

1. Our primary goal is to evince the true intent and purpose of the Legislature.
2. The best evidence of the legislature's intent is the plain language of the statute itself.
3. We presume that the legislature was deliberate in its choice of words and used each term advisedly and in accordance with its ordinary meaning.
4. Where a statute's language is unambiguous and provides a workable result, we need not resort to other interpretive tools, and our analysis ends.
5. However, our plain language analysis is not so limited that we only inquire into individual words and subsections in isolation,
6. Our interpretation of a statute requires that each part or section be construed in connection with every other part or section so as to produce a harmonious whole.
7. When interpreting statutory text, we presume that the expression of one term should be interpreted as the exclusion of another,
8. We will not infer substantive terms into the text that are not already there.
9. We assume, absent a contrary indication, that the legislature used each term advisedly and
10. [We] seek to give effect to omissions in statutory language by presuming all omissions to be purposeful."[15]

In land use cases, one additional standard is important:

> Because zoning ordinances are in derogation of a property owner's common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner.[16]

Thus, where there is a question about the intent of the language, the issue should be resolved in favor of the use of property and against an interpretation that would impose more regulation on land.

This is important because normally if the application submitted meets the standards of the ordinance in place at the time, it should be approved. Unless there are compelling, countervailing public interests or if changes in the law are pending before the local leadership, then the community is bound by the laws that are in place and can only enforce the codes that apply.[17]

How is the decision appealed?

A decision by an appeal authority may be appealed directly to the district court[18] or, in a case where an unconstitutional taking of property is alleged, to Utah's property rights ombudsman.[19]

Tips for participants

This opportunity to have an appeal authority review the interpretation of the ordinance and how it is applied is very powerful and seldom used by those who disagree with local regulation.

There is often a knee-jerk reaction by property owners who hear that a regulation will limit what they can do on their property—they think they need a variance.

But the fact is that you do not need a variance if the ordinance does not actually restrict you in the first place. As discussed in Chapter 7, applicants who want variances must prove they are entitled to them under strict standards. Those who want to appeal the meaning of the ordinance have no legal burden to meet—they just ask the question and expect the appeals authority to provide an answer.

Of course, as a practical matter, if you want the decision to be in your favor, you need to provide strong arguments in support of your position. Sometimes a good speech and a few well-chosen definitions from *Webster's Dictionary* are all the evidence you need to show why your interpretation of the ordinance is correct, and why it was inappropriately applied to your situation.

How Do We Interpret an Ordinance?

Case Law — Brown v. Sandy City Board of Adjustment[20]

A case in point may be helpful. In 1998, the Utah Court of Appeals considered a case involving residential uses in Sandy. Steve Brown and others with the same idea decided to rent out single family homes to skiers and other visitors on a nightly basis as if they were guest cottages. After receiving objections from neighbors, the city attempted to stop the practice and Brown challenged them to show him wherein the zoning code prohibited overnight rentals.

The city cited provisions of the ordinance stated that the single family zones were designed to create "a residential environment . . . that is characterized by moderate densities . . . a minimum of vehicular traffic and quiet residential

The black arrow marks the location of a house owned by Steve Brown in 1998. The Utah Court of Appeals held that Brown's use of the house as an overnight rental did not violate the Sandy land use regulations. Photo courtesy of Sandy City.

neighborhoods favorable for family life." **Not sure why there is an 11 here.* (Please accept my apologies in advance for the legalized obscurity of this next quote, but you need to see it in all its glory to understand why the court dismissed it.)

The city also referred to a provision of the ordinance that said, "No building or part thereof or other structure shall be erected, altered, added to or enlarged, nor shall any land, building, structure, or premises be used, designated, or intended to be used for any purpose or in any manner other than is included among the uses hereinafter listed as permitted or conditional uses in the district in which such building, land, or premises are located."[21]

In other words, if we don't specifically allow it, you can't do it. The court had no problem with this case. Citing the evidence that the code limited occupancy to "families" and Brown was, indeed, renting to "families," the court held in his favor. The Sandy ordinance did not limit the rental of properties to a certain minimum period of time and the city could not read into the ordinance what the ordinance clearly did not say. Although the city could have passed such an

Pictured above is the home that Steve Brown rented overnight to skiers, giving rise to a Utah appellate court decision that restated the rule that zoning ordinances are to be interpreted narrowly and in favor of the use of private property.

ordinance, it had not. Lacking an ordinance, the zoning administrator could not invent language that did not exist. This is not to say that the court concluded that a community must list every use that is prohibited in each zone in order to avoid a glue factory in the R-1 zone, but the point was clearly made. Local leaders may impose a wide range of restrictions by regulation, but they can't enforce a law they have not adopted.

Does Every Word in an Ordinance Count?

Case Law — Caster v. West Valley City[22]

West Valley City was involved in another case that vividly illustrates how strictly the courts read the ordinances. A property owner named Caster had a junkyard he called "Back Yard Auto" near the Rocky Mountain Raceway on 2100 South. The junkyard could only exist as a grandfathered use since it could not be legally created under the current ordinance.

A grandfathered use must be continued without interruption by the property owner in order to be legal. The city claimed that Caster had abandoned the use

Back Yard Auto's nonconforming use of a junkyard was the subject of Caster v. West Valley City, a case that upheld the continued use of the property in that manner.

because he had not sold or disassembled junk cars for more than a year. The city wanted all junkyard activity to stop and the old cars hauled away.

West Valley won at trial but lost at the Court of Appeals. The record showed there had been continuous use of the property to store abandoned autos for many years. The city ordinance defined the junkyard use as "the use of any lot . . . for the sale, storage, keeping, or disassembly of junk or discarded or salvaged material."

Since the word "or" was used instead of the word "and," reasoned the appellate court, doing any of the listed activities preserved the right to all of them. Since Caster had "stored" and "kept" old cars, he could resume the "sale" or "disassembly" at any time.

The ordinance was interpreted as it read—and the junkyard use was preserved since the ordinance provided that any one of the listed uses constituted a junkyard use.

Bottom line—read the ordinance. If it is not being interpreted correctly and the result goes against your interests, an appeal can resolve the matter in your favor.

2. Building, Fire, Landmark, Impact Fee and Health Code Appeals

Nature of the decision

A specific application or interpretation of a local code or specialized ordinance can be appealed if the person objecting believes it is being applied inappropriately. Each code typically makes a provision for appeals from decisions interpreting or applying the code.

When and where must the appeal be filed?

See the applicable code provisions. Perhaps no one has even checked to find out what appeals may be possible. Be patient as the local officials figure out how to respond to your request for appeal. There is often no fee for an appeal.

Who makes the decision?

It depends on what the code says. The decision of a building inspector may be appealed to the chief building official. The chief building official's decision may be

appealed to the local building inspection board of appeals or to the state building board, for example.

What notices are required?

Sometimes none is required. If the entity making the decision is a body defined as being subject to the Open and Public Meetings Act (most governmental bodies are), then the minimal 24-hour notice must be provided.[23]

What public input is required?

There is none required unless the board or official making the decision invites or allows it.

What are the issues?

The main issue is whether the official whose decision is appealed made a correct application of the code or rule. As with zoning appeals, unless local ordinance provides otherwise, no deference need be allowed the local official. The question is whether or not the decision is "correct," not whether or not the decision was supported by some good reason.

How is the decision appealed?

It depends on the code or ordinance involved. If no means of appeal is provided, then a final decision, made after exhausting local administrative remedies, can be appealed to the district court.[24] Arbitration or mediation also can be requested through the property rights ombudsman.[25]

Be certain the appeal is made in a timely manner. If you miss the deadline, your appeal cannot be heard.

Tips for participants

Don't be shy. If you do not agree with a local decision involving the codes and rules, find out how to appeal. Sometimes you will get blank looks over the counter because no one has asked how to appeal before.

Prepare your information and make the appeal. The decision you receive must be supported by substantial evidence and you are entitled to a straight answer.

3. Takings Appeals Procedures

Nature of the decision

Every local government entity, including towns, cities, counties, special districts, and others, must have an ordinance that allows for a local appeal by a property owner who feels that a decision made by the city or county has violated his constitutional property rights.[26]

The appeal is guaranteed whether the issue involves a land use issue or not. Any "taking" question may be appealed. Local procedures vary, so there is no substitute for reading the ordinance.

When and where must the appeal be filed?

See the local ordinance. There is often not a fee, although one could be imposed by the local ordinance.

Who makes the decision?

It depends on the takings appeal ordinance. Usually, it is the council or county commission that hears the appeal. Sometimes there is a separate body appointed, or the board of adjustment or other appeal authority hears the matter.

What notices are required?

If the hearing is before a public body, only the minimal notice provided for in the Open and Public Meetings Act is required by state law – check the local ordinance as well.[27]

What public input is required?

None is required unless the local ordinance provides for public input. No takings appeals ordinance I have seen provides for public notice or input. The body making the decision would usually allow public comment in the public meeting held to resolve the issue, if the public showed up to comment, however.

What are the issues?

Simply stated, the question is whether a court would find the local decision violates protected property rights. See the part of Chapter 16 that deals with pitfalls related to these rights.

How is the decision appealed?

A takings claim can be brought in district court or federal court or in the alternative, a request for arbitration or mediation can be filed with the private property ombudsman.[28]

Tips for participants

I recommend takings appeal process if anyone asks me for my opinion and they have a legitimate claim for just compensation. There are some local ordinances, however, that require a property owner to make extensive, intrusive disclosures of his property value, income from rentals, appraisals, purchase price, offers to sell or buy, etc., that the property owner may not wish to reveal. I believe these requirements to be inappropriate in many cases, but some ordinances say they must be made to pursue an appeal. The process is optional, and the state statute says that you do not need to use the local takings appeals process before filing a complaint in state or federal court or coming to the ombudsman for further action. If the procedures in local ordinance are unfairly intrusive, don't use them.[29] Feel free to contact the property rights ombudsman for help with local takings appeals.

4. Legal Action—When It's Necessary

As a last resort, once the local appeals are exhausted and the ombudsman either has no jurisdiction over the matter or you have decided not to attempt to involve that office, you are at the courthouse doors.

When to File

Rule no. 1: Do not miss the deadline to appeal. You must file an appeal within 30 days of the date that a land use decision is made, or you will probably lose your chance forever.[30] The statute says that a land use decision is rendered on the date that a written decision is issued, or otherwise as provided in local ordinance.[31]

Seek Informed Assistance

Rule no. 2: Get a lawyer who understands land use law in Utah. Not all do. While your family attorney may be helpful in general negotiations, working out the development agreement, or evaluating the options, there is no substitute for someone who understands the principles outlined in this book when it comes time to file a lawsuit.

An attorney who is not acquainted with the process can make simple errors in the process that may doom your case before you ever get to the courtroom. It is common for an attorney to miss the chance to lay the proper record before the local appeals processes only to find after a long legal battle that the Court of Appeals must dismiss it because essential elements of the complaint are missing.

The attorney must be sure that all local appeals have been attempted and that they are working on the right theory—whether for a legislative issue or an administrative matter.

Realistically Consider the Potential Result

When you do go to court, make sure you know what you want and what you can expect to gain through the process. The plaintiffs in the board of adjustment case we discussed in Chapter 7 must have been pleased with their victory after claiming that the proper procedures were not followed in granting the variance.

They were no doubt nonplussed, however, when the board simply heard the matter again, this time following the right procedures, and granted the variance correctly. The same result remained after all that hassle and expense.

The remedy may be invalidation—where the decision made is struck down. Often this means the local government entity simply makes the decision again, but this time follows procedure correctly. Sometimes the result can change, but there is not always a guarantee that will happen.

The person bringing the lawsuit may seek an injunction where the effect of a decision is halted, and everyone takes a time out while other issues are litigated. This can obviously be a very effective tool. One advantage is that it is a quick remedy and brings things to a head sooner. If implementation of a local decision is held up, then pressures build that would help promote a resolution earlier rather than later. An injunction is not always available, and sometimes a lot of time and energy is spent without results.

A "Writ of Mandamus" is a court order forcing a government official or entity to do their job. For example, if the planning office failed to process your land use application, you could seek a "Writ of Mandamus" requesting that the courts force them to process the application.

Rarely is such a remedy worth the hassle. It is not common, in light of the extraordinary deference that courts grant to local government entities, that a city or county is ordered to do anything. It does happen, however. The "builder's remedy" of having a building permit revived and placed back into force, or the subdivision approved by court order, can sometimes be the fairest result.

While this is often the prime hope of the plaintiff in a lawsuit, it is rarely the result, so don't go into the courtroom with unrealistic expectations.

The result of legal action may be damages, but it rarely is. Usually damages are only paid as "just compensation" in a "takings" claim to assert private property rights. Sometimes the plaintiff in a lawsuit does not want compensation—they want the project stopped. Unfortunately for them, if an unconstitutional taking of private property is proven, the result sometimes is that compensation must be paid, not that the decision is rescinded.

As a practical matter, of course, most government entities do not like to pay damages. Most successful takings cases result in rescission of decisions and not the payment of damages.

Negotiation and Settlement

One of the obvious goals of litigation is to get the other party into a position where they will settle a case. This certainly happens with government actions, but it is less likely. Remember that the defendant in a land use case is often a city or county with more resources than citizens and property owners have. It also is difficult to settle a case when that decision must be made by a disparate group like the council or commission rather than by an individual. Sometimes legal battles are like real ones—such as the Civil War, which was expected to last a few weeks and went on for five years, leaving incalculable damage to the nation.

It is certainly wise to consider all options before litigation. And after a land use lawsuit is commenced by the filing of a Petition for Review with the district court, it is still a good idea to pursue every option to compromise and settle the matter, so long as settlement results in a fair resolution.

That said, however, there are certainly cases that must be heard and must go to the appellate courts if we are to clarify the law.

Sometimes there are issues of such novelty and importance that the courts must take a position for the good of all. There is no question that there are times when no other options exist, and both government entities, property owners, citizens, and planners need answers that only the courts can give.

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1 *Specht v. Big Water Town*, 2017 UT App 75. Although Specht lived on the cul-de-sac which the local council agreed to alter, he did not have standing to challenge the alterations because he did not prove that he was harmed by the decision. ¶¶51-53. A plaintiff must establish that the challenged decision has prejudiced some substantial personal right. It is not enough to argue that the community at large has been injured. The injury must be personal to the plaintiff. A plaintiff must also prove that there is a reasonable likelihood that the local government's decision would have been different if the decision had followed the law. *Potter v. South Salt Lake City*, 2018 UT 21, ¶33, citing and clarifying *Springville Citizens v. Springville*, 1999 UT 25, 979 P,2d 332.

2 Utah Code Ann. §10-9a-801(1) (municipalities); Utah Code Ann. §17-27a-801(1) (counties).

3 *Brendle v. Draper*, 937 P.2d 1044 (Utah App. 1997), at ¶20.

4 *Patterson v. American Fork*, 2003 UT 7, ¶20, 67 P. 3d 466 (Utah 2003).

5 Utah Code Ann. §10-9a-701(1)(a) (municipalities); Utah Code Ann. §17-27a-701(1)(a) (counties).

6 *Brendle*, 937 P.2d 1044.

7 Utah Code Ann. §10-9a-704(2) (municipalities); Utah Code Ann. §17-27a-704(2) (counties).

8 Utah Code Ann. §52-4-202(1)(a)(i).

9 Utah Code Ann. §52-4-103(9)(a) defines a "public body" as two or more persons. The Open and Public Meetings Act only applies to public bodies.

10 Utah Code Ann. §10-9a-707(2) (municipalities); Utah Code Ann. §17-27a-707(2) (counties).

11 Utah Code Ann. §10-9a-707(3) (municipalities); Utah Code Ann. §17-27a-707(3) (counties).

12 *McElhaney v. Moab*, 2017 UT 65 ¶41. In this case the Moab City Council's decision could not be reviewed, as required by state law, on the record because there were no findings of fact and conclusions of law in the record. The Supreme Court remanded the matter back to the city to correct the record. In doing so, the court cited the same language from state law that applies to appeal authorities which must conduct a record review – to support a decision if there is substantial evidence in the record. Utah Code Ann. §10-9a-707(3) (municipalities); Utah Code Ann. §17-27a-707(3) (counties).

13 Utah Code Ann. §10-9a-707(4) (municipalities); Utah Code Ann. §17-27a-707(4) (counties).

14 *Id.*

15 *2 Ton Plumbing LLC v. Thorgaard*, 2015 UT 29; 345 P.3rd 675, ¶¶ 31-32. The exact text of the decision by the Supreme Court is here slightly paraphrased, as shown. The entire citation has been reformatted by numbering each sentence in the two paragraphs for easier reference. Quotation marks and citations to other cases have been omitted. Otherwise, these numbered criteria are in the words of the Utah Supreme Court.

16 *Patterson v. Utah County Bd of Adj.*, 893 P.2d 602, 606 (Utah Ct App. 1995); *Brown v. Sandy City Bd. of Adjustment*, 957 P. 2d 207, 210+ (Utah App. 1998).. Ferre v. Salt Lake City, 2019 UT App 94, ¶17.

17 Utah Code Ann. §10-9a-509 (1)(a)(ii) (municipalities); Utah Code Ann. §17-27a-508 (1)(a)(ii) (counties).

18 Utah Code Ann. §10-9a-801 (2)(a) (municipalities); Utah Code Ann. §17-27a-801(2)(a) (counties).

19 Utah Code Ann. §13-43-204(1)(a) limits the ombudsman's role in arbitration to "taking or eminent domain issues." The office has much broader involvement before a final decision is made by a land use appeal authority through advisory opinions and other means. See chapter 13 of this work, Utah Code Ann. §13-43-205, and other sections in the Property Rights Ombudsman statute.

20 *Brown v. Sandy City Bd. of Adjustment*, 957 P. 2d 207 (Utah App. 1998).

21 *Brown*, note 1, citing Sandy City, Utah, Dev. Code §15-21-11 (1996).

22 *Caster v. W. Valley City*, 2001 UT App. 212, 29 P. 3d 22 (Utah App. 2001), ¶6.

23 Utah Code Ann. §52-4-202(1)(a)(i).

24 Utah Code Ann. §10-9a-801 (municipalities); Utah Code Ann. §17-27a-801 (counties). These sections would apply if the code decision is a "land use decision" as defined in Utah Code Ann. §10-9a-103(31) (municipalities); Utah Code Ann. §17-27a-103(35) (counties). A building, fire, health, or other code issue not associated with a land use permit application may not be a "land use decision" so the specific path to the district court is beyond the scope of this analysis.

25 Note 19, supra.

26 Utah Code Ann. §63L-4-301.

27 Utah Code Ann. §52-4-202(1)(a)(i).

28 Note 19, supra.

29 Utah Code Ann. §63L-4-301(2)(b).

30 Utah Code Ann. §10-9a-801(6) (municipalities); Utah Code Ann. §17-27a-801(6) (counties).

31 Utah Code Ann. §10-9a-708(2) (municipalities); Utah Code Ann. §17-27a-708(2) (counties).